

PROPOSED AMENDMENTS TO ADMISSION AND DISCIPLINE RULE 23

EXECUTIVE SUMMARY

At the direction of the Indiana Supreme Court, the Disciplinary Commission has been working on a comprehensive overhaul of Rule 23 throughout 2013 to 2015. The principal goals of the amendments are twofold - to make the substantive provisions of Rule 23 more understandable and easier to locate, and to streamline the investigation and prosecution process. Rule 23 will be further refined as the rules for e-filing are established to insure uniformity with that developing body of rules.

Stylistic and Organizational Changes

Regarding the goal of user-friendliness, the amendments do the following throughout the entire body of the rule:

- Add a table of contents.
- Rearrange and group sections under five major headings: Overview, the Disciplinary Commission and Bar Associations; Specific Procedures; General Provisions; and Trust Accounts.
- Group similar topics in a single section or successive sections.
- Divide long text bodies into enumerated subsections with headings.
- Use updated and consistent language.

Additionally, some terminology is changed. Most notably, the “Executive Secretary” title is changed to “Executive Director,” Section 1(d)(4), and the name “Verified Complaint” is changed to the more descriptive “Disciplinary Complaint,” although the verification requirement remains, Section 12(a).

Efficiencies in the Investigation of Grievances

Attempts to expedite procedural delay and eliminate hindrances to timely case advancement include:

- Speedier response time to grievances. Section 10(e).
- Eliminate “docketing” benchmark [Current Section 10(b)] in the grievance timeline. Docketing is an internal threshold in which a case moves from preliminary inquiry to formal investigation. Docketing adds unnecessary time to the Commission’s ability to make a charging decision.
- Create an internal one-year time limit to the length of investigation, subject to extension by the Court, to enable the Court to exercise its supervisory authority without creating any substantive or procedural rights. Section 10(h).
- Streamline the process for self-reporting misconduct. Section 10(f).

- Modify the noncooperation process to achieve better efficiency. The noncooperation process is detached into a new section, Section 10.1. The new section sets forth with specificity the elements of a response to a show cause order. Section 10.1(c)(2).
- The time to cure a noncooperation suspension before conversion to an indefinite suspension is reduced from 180 days to 90 days. An indefinite suspension requires going through the license reinstatement process. Section 10.1(c)(4).
- Creates a pathway to indefinite suspension for a repeat non-cooperator. Section 10.1(c)(5).

Agreed Discipline, Resignation, and Consent to Discipline

- Provisions regarding private administrative admonitions and conditional agreements for discipline are relocated to a new Section 12.1 entitled “Agreed Discipline.”
- The time to agree to a proposal of resolution from the Court is reduced from 60 to 30 days. Section 12.1(b)(4).
- A conditional agreement may be introduced into evidence in certain post-discipline proceedings such as a contempt or reinstatement hearing. Section 12.1(b)(5).
- Disbarment by consent is an additional method to dispose of a discipline matter. Section 17(c).
- Consent to discipline is detached from resignation and housed in its own section without unneeded confidentiality protection. Section 17.1

Disciplinary Proceedings

- Hearing officer qualifications are amended including a safeguard against conflicts of interest. Section 13(a).
- Both the Commission and the respondent may petition for a change of hearing officer. Section 13(b).
- A hearing on a Motion for Judgment on the Complaint must be set for hearing within twenty-eight (28) days. Section 14(c).
- The Hearing Officer’s Report must be filed within 60 days after the conclusion of the hearing. Section 14(g).

Reinstatement Proceedings

- Procedures for reinstatement after suspension without automatic reinstatement have been substantially revamped.
- The hearing officer may not be a member of the Commission (although he or she may be a former member). Section 18(b)(4).

- A Hearing Officer's Report is filed with the Court. Both the petitioner and the Commission may petition the Court for review of the report. The hearing officer is not aligned with either party. Section 18(b)(4).
- The MPRE is now a condition precedent to the filing of a petition for reinstatement. The minimum required score is raised from 80 to 100. Section 18(b)(2).
- A suspended attorney must file the client notification affidavit as a condition precedent to filing a petition for reinstatement. Sections 18(b)(2) and 26(e).
- A petitioner must wait at least 12 months after a reinstatement denial before filing a subsequent petition for reinstatement. Section 18(b)(2).

The Duties of Suspended Attorneys

- The duties of a suspended attorney apply to those under suspension for registration fee nonpayment, continuing legal education noncompliance, and nonpayment of costs ("license maintenance suspension"). Section 26(a).
- A suspended or disbarred attorney must file a notice in every pending legal matter in which the attorney has appeared, attaching a copy of the discipline order. Section 26(b)(2).
- Some duties previously applicable only to disbarred attorneys are extended to attorneys who are suspended without automatic reinstatement, including withdrawing from cases. Section 26(c).
- An attorney who is disbarred or suspended without automatic reinstatement must close IOLTA and other trust accounts and disburse any funds to their owners. Section 26(c)(6).
- An attorney with no clients must file an affidavit with the Court stating that the attorney has no clients. Section 26(c)(7) and (d)(3).

Trust Accounts

The existing trust account recordkeeping rule at Section 29(a) is cumbersome and only vaguely describes the records an attorney is required to keep. The amendments, which are based upon the ABA's Model Rules for Client Trust Account Records, explicitly set forth the records an attorney is required to retain in order to comply with the "complete records" requirement of Prof. Cond. R. 1.15(a). In addition, templates are added to aid compliance with the recordkeeping requirements.

Other updates and clarifications regarding trust accounts include:

- Clarifies the existing prohibition against commingling funds. Fully earned fees should be withdrawn from the trust account and deposited in the attorney's personal or business account. Section 29(c)(2).
- Attorneys are now permitted to make electronic disbursements, provided that they keep certain records of the transaction. Section 29(c)(6).
- Attorneys must periodically reconcile their internal trust account records with the periodic bank account statements. Section 29(c)(7).

- The separate “Indiana Supreme Court Disciplinary Commission Rules Governing Attorney Trust Account Overdraft Reporting” are relocated to Section 30.
- The overdraft investigation process is streamlined so that there are not multiple levels of inquiry nor multiple opportunities for non-cooperation suspension. Section 30(g).

Bringing Disciplinary Proceedings into the Electronic Age

- Electronic filing, service, and submission to the Court are permitted as “authorized or required by the Supreme Court.” Section 23(b), (f), and (h). For paper filings, only the original is required. Section 23(c).
- The Hearing Officer’s Report must be accompanied by a copy in electronic format. Section 14(g).
- Paper petitions and briefs may be (but are not required to be) accompanied by a copy of the document in electronic format. Section 23(k).
- Constructive service may be accomplished by emailing to the attorney at his or her official email address copies of, or hyperlinks to the documents. Section 23.1(c).

Clarifying Points of Confusion, Filling in Gaps, and Miscellaneous Changes

- Diversity goals for Commission membership are clarified. Section 6(b).
- The process to ratify the Executive Director’s decision to dismiss a grievance is clarified. Section 10(a) and (g).
- An investigation may continue after a disciplinary complaint is filed if new evidence comes to light. Section 10(d).
- The duty to self-report to the Commission both felony and misdemeanor convictions is clarified. Section 11.1(a)(1).
- The Rules of Evidence apply in proceedings before a hearing officer. Section 14(a).
- Commission staff must transmit the record of the case to the Supreme Court Clerk for filing when the Hearing Officer’s Report is filed. Section 14(g).
- Costs must be paid no later than 20 days before suspension with automatic reinstatement is due to end. Section 18(a)(4).
- The process to determine disability is streamlined, updated, and clarified. Section 19.
- Reciprocal discipline provisions will apply to both final and interim discipline orders from foreign jurisdictions. Section 20(a).
- An attorney under reciprocal discipline with probation must self-report to the Commission any revocation of the foreign jurisdiction’s probation. Section 20(e).

- The Commission may impose costs to provide copies of documents (excluding discovery). Section 21(c).
- The section titled “Public Disclosure” is retitled as “Public Access.” It incorporates by reference Administrative Rule 9, and clarifies the identity of confidential documents. Section 22.
- The requirement to “submit” a document to the Supreme Court is distinguished from “filing” with the Clerk. Section 23(h).
- Formatting requirements for documents based on Appellate Rule 43(B) through (G) are implemented. Section 23(j).
- Procedural guidance on motion practice is imparted. Section 23(l).

Conclusion

Public comment to these proposals can be directed to the Supreme Court Division of State Court Administration at <http://courts.in.gov/4407.htm>. The comment period is open for 60 days. Please consult the State Court Administration webpage (<http://courts.in.gov>) for the exact dates of the open comment period and any other information related to the roll out of the Rule 23 amendments.